

## **AHCCCS Maintenance of Effort Waiver Frequently Asked Questions**

SB 1001, signed by Governor Brewer on January 21, 2011, allows the Arizona Health Care Cost Containment System (AHCCCS) to request a waiver of the maintenance of effort (MOE) requirements included in the Patient Protection and Affordable Care Act (P.L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), collectively known as the "Affordable Care Act." The ACA requires states to maintain their Medicaid and Children's Health Insurance eligibility methods, standards and procedures, or risk losing all of their federal Medicaid matching funds. However, this requirement was placed in a section of Medicaid law that the U.S. Secretary of Health and Human Services may waive.

Below are answers to commonly-asked questions regarding the waiver:

### **1. What is a waiver? What is the waiver process?**

Title XIX of the Social Security Act is the section in federal law that outlines the parameters of the Medicaid program. The HHS Secretary has the authority to waive certain sections of federal law and allow states to implement programs that would otherwise contradict Title XIX requirements.

There are different types of waivers, the most broad of which is the Section 1115 waiver, which allows the Secretary to approve innovative demonstrations that further the objectives of Medicaid (e.g., requiring enrollees to participate in managed care programs). Since its inception, the entire AHCCCS program has operated under the authority of a Section 1115 waiver. The MOE waiver request was submitted as part of the existing AHCCCS Section 1115 waiver.

Timelines for waiver requests vary. Under the typical process, the State will submit its request, engage in substantive discussions with CMS officials, provide any other needed information and answer questions related to the submittal. Given the timing of the submittal and the fact that the Section 1115 waiver governing the entire AHCCCS program expires on September 30, 2011, Governor Brewer expects CMS action before the expected October 1, 2011 implementation date.

### **2. Why did AHCCCS need statutory authority to request the waiver? Hasn't AHCCCS pursued waiver changes in the past without explicit authority?**

It is correct that AHCCCS has pursued waiver changes in the past. The key difference is that those waiver changes were within AHCCCS's existing statutory authority, and AHCCCS was able to implement them without legislative action.

Eligibility for the Medicaid program is set in state statute. Changing that eligibility was not within AHCCCS's existing statutory purview. Without legislative authorization, AHCCCS could not have implemented the changes, even with federal approval. The Secretary will not approve waivers that the agency does not have the authority to implement.

### **3. How will Arizona compare to other states after this change?**

This change will put Arizona in line with most other state Medicaid programs. Currently, Arizona is one of only six states that covers childless adults in its Medicaid program. It is also one of a few states that covers parents up to 100 percent of the federal poverty level. The national median of

## AHCCCS Maintenance of Effort Waiver Frequently Asked Questions

coverage for parents is 63 percent. In addition, 20 percent of Arizonans are currently covered by AHCCCS in 2009, greater than the national average of 15.8%.

#### **4. Is the Proposition 204 population protected by Proposition 105? Do you need voter approval to change eligibility for that population?**

Proposition 204, passed by the voters in 2000, expanded AHCCCS eligibility to include all persons with incomes below 100 percent of the federal poverty level. The ballot descriptive title read as follows:

##### **DESCRIPTIVE TITLE**

*FUNDS THE HEALTHY ARIZONA INITIATIVE PASSED IN 1996; INCREASES ELIGIBILITY OF WORKING POOR AT FEDERAL POVERTY LEVEL FOR HEALTH CARE COVERAGE THROUGH AHCCCS (ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM); FUNDS HEALTH EDUCATION, NUTRITION AND PREVENTION PROGRAMS; FUNDS PREMIUM SHARING AND OTHER HEALTH CARE PROGRAMS WITH TOBACCO LITIGATION SETTLEMENT MONIES.*

And the ballot language said:

*A "yes" vote shall have the effect of providing funding for the 1996 Healthy Arizona Initiative, increasing healthcare coverage eligibility for Arizona's working poor at the federal poverty level and funding previously authorized preventative health education, nutrition and prevention programs using the tobacco litigation settlement money.*

*A "no" vote shall have the effect of not requiring appropriation of tobacco settlement money to support these programs.*

Since 2004, the Tobacco Settlement Funds have been inadequate to fund the Proposition 204 expansion. Currently, \$101 million in Tobacco Settlement Funds are used to support the expansion. Despite a subsequent voter initiative directing additional Tobacco Tax funding to the program, the General Fund subsidy for the program has grown to more than \$700 million for FY 2012. The ballot language also directed that the Tobacco Settlement monies shall be "supplemented, as necessary, by any *other available sources* and federal monies." (Emphasis added.) The Executive Budget assumes no other monies are "available" to supplement the Tobacco Settlement and Tax monies.

#### **5. Are there any kids affected by the rollback? What about persons with serious mental illness (SMI)?**

Although there are small numbers of children and persons with SMI in the Proposition 204 populations affected by the roll-back, the Executive is working to ensure no children covered in the TANF category or persons with SMI lose coverage. There are a variety of methods being explored to ensure continued coverage for these populations, such as reclassifying their eligibility.

## **AHCCCS Maintenance of Effort Waiver Frequently Asked Questions**

### **6. Don't some Arizona employers depend on AHCCCS coverage for their employees?**

Although Governor Brewer acknowledges rising employee health care costs are a challenge for many employers, she does not believe the answer to those challenges is for employers to facilitate enrollment of employees onto taxpayer subsidized government health programs.

### **7. What will happen to the people who lose coverage?**

The Executive Budget includes an allocation of \$50 million, to be matched with federal funds for a total of \$151 million, for an uncompensated care pool for Arizona health care providers similar to the Disproportionate Share Hospital (DSH) program. The intent of these monies is to continue – to the greatest extent possible – life-saving care for the most seriously ill Arizonans (including, for example, those in need of a transplant). These decisions will be made by health care providers who can best assess the most serious needs, similar to how providers assess individuals for charity care.